

HARRY L. BEVERS

IBLA 84-713

Decided December 13, 1984

Appeal from decision of Arizona State Office, Bureau of Land Management, denying appellant's petition for reinstatement of oil and gas lease A 17231.

Affirmed.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Reinstatement
-- Oil and Gas Leases: Termination

Pursuant to 30 U.S.C. § 188(b) (1982), when the lessee fails to pay rentals on or before the anniversary date of the lease, and no oil and gas in paying quantities is being produced on the leased premises, the lease shall automatically terminate by operation of law. The Secretary may reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1982), if the full rental is paid within 20 days of the lease anniversary date, and the failure to timely pay the rental was justifiable or not due to a lack of reasonable diligence. Reliance upon receipt of a courtesy notice can neither prevent a lease from terminating by operation of law nor serve to justify a failure to timely pay the rental. When the lessee has actual notice that the rental was due, and the failure to timely pay the rental was due to the lessee's own neglect, the failure to timely pay is neither justifiable nor demonstrative of reasonable diligence. Therefore a petition for reinstatement must be rejected.

APPEARANCES: Stewart McKeehan, Esq., Odessa, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Harry L. Bevers appeals from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated June 11, 1984, rejecting his petition for reinstatement of oil and gas lease A 17231.

The original lease was issued to Edgar B. Heylmun on April 1, 1982. On August 1, 1982, Heylmun assigned the lease to John D. Blake. On April 1, 1983, Blake assigned the lease to Harry L. Bevers, appellant herein.

On April 1, 1984, appellant's lease was automatically terminated for failure to pay the required rental on or before the anniversary date of the lease. On April 10, 1984, BLM notified appellant that his lease had terminated. BLM also informed appellant of his right to petition for reinstatement of the lease pursuant to 30 U.S.C. § 188(c) (1982) (class I reinstatement), and pursuant to 30 U.S.C. § 188(d), (e) (1982) (class II reinstatement). BLM's lease termination notice set forth the conditions for reinstatement under both class I and class II. 1/

1/ The lease termination notice outlined the reinstatement conditions as follows:

"I. Class I (30 U.S.C. 188(c); 43 CFR 3108.2-1(c))

"Your lease may be reinstated under these provisions if: (a) the rental is received in this office within 20 days after the anniversary date of the lease and it is shown to the satisfaction of the authorized officer that failure to pay was either justifiable or not due to a lack of reasonable diligence; and, (b) that a petition for reinstatement, together with the required rental and a \$25.00 filing fee, is filed in this office within 15 days after receipt of this Notice; and, (c) that a new oil and gas lease has not been issued for any of the lands included in the terminated lease. Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. If these conditions are met, your lease can be reinstated with the original lease terms and conditions, effective on the date of termination.

"If one or more of the above conditions are not met, your lease may be eligible for a Class II reinstatement. However, to qualify for a Class II reinstatement, the following conditions must be met.

"II. Class II (30 U.S.C. 188(d) and (e); Sec. 401, 97-451)

"Your lease may be reinstated under these provisions if: (a) the rental is received in this office within 20 days after the anniversary date of the lease, and it is shown to the satisfaction of the authorized officer that failure to pay on the anniversary date was due to inadvertence, or, if the rental is not received in this Office within 20 days after the anniversary date of the lease, it is shown to the satisfaction of the authorized officer that failure to pay was either justifiable or not due to a lack of reasonable diligence or due to inadvertence; and, (b) that a petition for reinstatement, together with the rental and royalty due from the date of termination payable at the new rates set out below, is filed in this Office within 60 days after receipt of this Notice; and, (c) that a new oil and gas lease has not been issued for any of the lands included in the terminated lease.

"If these conditions are met and you wish to petition, the requirements for reinstatement under Class II are as follows:

"1. You must submit a reinstatement processing fee of \$500.00; and, "2. You must submit the new noncompetitive lease rental rate of \$5.00 per acre or fraction thereof per year and agree to the new royalty rate of 16 2/3 percent; and,

"3. You will agree to pay the cost of publishing a Notice of Proposed Reinstatement in the Federal Register, for which you will be billed.

On April 18, 1984, appellant tendered rental payment of \$6,080, and filed a petition for reinstatement pursuant to class I. The petition for reinstatement which accompanied the payment was dated April 17, 1984. ^{2/} In his petition for reinstatement, appellant argued that:

Originally the lease was issued to Mr. Edgar B. Heylmun of Tucson, Arizona. He assigned the lease to John D. Blake, who at the time was a full partner of mine. During this time, all correspondence was going to Mr. Blake. However, soon after this, Mr. Blake and I split our partnership and there has been no friendly correspondence between us. In the split-up I received the A-17231 acreage. I did not receive any notice of rental due, nor any assignment, nor was there any correspondence of any kind sent to Mr. Blake, and although assignments were made, I honestly believe all correspondence was being sent to Mr. Blake and not to me, Harry Bevers, in Odessa.

BLM denied appellant's petition for reinstatement on the grounds that Bevers "has not provided evidence of either reasonable diligence or justifiable delay to qualify for reinstatement." BLM found that although Bevers asserted that he had received no correspondence indicating that the rental was due, the letter he submitted from John Blake, dated March 3, 1983, specifically stated that the rental payment would be due on April 1, 1983. BLM relied upon Ruth Eloise Brown, 60 IBLA 328 (1981), for the proposition that the failure to receive a courtesy billing notice for lease rental will not justify the late payment of rental.

In his statement of reasons for appeal, appellant contends that his "late payment of rentals was not due to a lack of reasonable diligence, and the intervention of litigation [between appellant and Blake] is evidence of the fact that the late payment was justifiable."

[1] Section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that when the lessee fails to pay rentals on or before the anniversary date of the lease, where no oil or gas in paying quantities is being produced on the leased premises, the lease shall automatically terminate by operation of law. If the lessee has paid the full rental within 20 days after the lease anniversary date, and the lessee shows that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence, then the Department may, under

"If all these requirements are met, your lease can be reinstated with the amended terms and conditions, effective on the date of termination." (Emphasis in original.)

^{2/} Effective Aug. 22, 1983, the regulations were revised to provide that the rental payment is "timely filed" where it is received within 20 days of the anniversary date and the remittance is postmarked on or before the anniversary date. 43 CFR 3108.2-1(a), 48 FR 33673 (July 22, 1983). However, this cannot avail appellant as the remittance was clearly not transmitted until after the anniversary date.

certain circumstances, reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1982) and 43 CFR 3108.2-1(c). E.g., Leo M. Krenzler, 82 IBLA 205, 207 (1984); Kay Fink, 81 IBLA 381, 382 (1984); Arthur M. Solender, 79 IBLA 70, 72 (1984).

43 CFR 3108.2-1(c) provides:

(c)(1) Except as hereinafter provided, the authorized officer may reinstate a lease which is terminated for failure to pay on or before the anniversary date the full amount of rental due, provided that:

(i) Such rental was paid or tendered within 20 days after the anniversary date; and

(ii) It is shown to the satisfaction of the authorized officer that the failure to timely submit the full amount of rental due was either justified or not due to a lack of reasonable diligence on the part of the lessee; and

(iii) A petition for reinstatement, together with a nonrefundable filing fee of \$25 and the required rental, including any back rental which has accrued from the date of the termination of the lease, is filed with the proper BLM office within 15 days after receipt of Notice of Termination of Lease due to late payment of rental. The Notice of Termination shall be sent only if the rental is actually paid.

43 CFR 3108.2-1(c)(2) provides: "The burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to a lack of reasonable diligence will be on the lessee." E.g., Leo M. Krenzler, *supra* at 207; Arthur F. Hovey, 79 IBLA 148, 149 (1984).

In the instant case, appellant implicitly argues that his late rental payment was caused by his failure to receive notice of the payment due. However, it is well established that reliance upon receipt of a courtesy notice can neither prevent an oil and gas lease from terminating by operation of law nor serve to justify a failure to timely pay the lease rental. E.g., Larry W. Ferguson, 81 IBLA 167, 169 (1984); Harry C. Peterson, 75 IBLA 195, 197 (1983); C. J. Iverson, 21 IBLA 312, 320, 82 I.D. 386, 390 (1975). Thus, even if appellant did not receive any notice that the payment was due, his lack of timely payment was not justified.

Moreover, the letter from John Blake to appellant, dated March 3, 1983, informed appellant that: "[Y]ou will also find enclosed a notice from BLM for rentals on the Skinner Prospect which will be due on April 1."

Therefore, appellant was afforded actual notice that the required rental was due on April 1, 1983, and that it would be due on the same month and day in subsequent years. Thus, appellant's failure to timely pay the required rental payment was clearly due to his own neglect. When the failure to pay the anniversary rental on time is due to negligence, forgetfulness, or inadvertence, the failure is not justifiable. Leo M. Krenzler, *supra* at 209; Eleanor L. M.

Dubey, 76 IBLA 177, 179 (1983). Although late payment of an annual rental may be considered justifiable if the untimeliness was proximately caused by circumstances outside the lessee's control at or near the anniversary date of the lease, Leo M. Krenzler, *supra* at 207; William F. Branscome, 81 IBLA 235, 237 (1984), here, the untimeliness was clearly within appellant's control. Here, appellant has failed to carry his burden of proving that his failure to timely pay the required rental was justifiable or not due to a lack of reasonable diligence. We therefore conclude that appellant's petition for reinstatement was properly rejected.

BLM properly advised appellant in the notice of termination that a reinstatement petition may be filed under 30 U.S.C. § 188(d), (e) (section 401 of the Federal Oil and Gas Royalty Management Act of 1982), which authorizes reinstatement in the absence of due diligence under certain stringent conditions where the failure to pay timely was "inadvertent." However, appellant did not petition for reinstatement under that provision, therefore, we do not address that issue.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

